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U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION
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	CORRESPONDENCE SYMBOL TEURL
	DATE July 12, 1985

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 30-85

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : *Barbara Ann Farmer*
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SUBJECT : Denial of Benefits to Educational Employees
in Crossover Situations

1. Purpose. To inform State Employment Security Agencies (SESAs) of the requirements of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) regarding the denial of benefits in crossover situations (change in employment status) to educational employees during customary vacation periods or holiday recesses ("within terms") and during periods between terms.

2. References. Public Law (P.L.) 98-21, UIPL No. 41-83, UIPL No. 18-78, and Supplement 3, 1976 Draft Legislation, dated May 6, 1977.

3. Background. The crossover situation was first explained on page 7 of Supplement 3, 1976 Draft Legislation. It arises when an educational employee working in one capacity receives assurance of continued employment in the second of two academic periods in the other capacity encompassed by Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). For example, if a teacher (a person serving in a "professional" capacity) receives assurance that at the end of the Christmas holidays recess his/her employment will be continued in January, but as a teacher's aide (i.e., in a "nonprofessional" capacity) rather than as a teacher, a crossover will occur if the teacher goes on to the new job.

Additional crossover questions arose with the passage of P.L. 98-21 which required States to implement clauses (iii) and (iv) of Section 3304(a)(6)(A), FUTA, and introduced a new optional clause (v). Clause (iii) requires denial of benefits based on services performed by both professional and nonprofessional employees of educational institutions during within terms periods.

RESCISSIONS	EXPIRATION DATE
	March 31, 1987

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Clause (iv) requires denial of benefits both between and within terms based on services performed in an educational institution while in the employ of an educational service agency. Finally, clause (v) permits States to apply the same denial provisions to services provided to or on behalf of an educational institution (e.g., by local police crossing guards).

Clause (iii) of Section 3304(a)(6)(A), FUTA, continues to be interpreted as requiring denial of benefits during within terms periods in crossover situations, although denial in crossover situations arising between terms is still precluded in accordance with the established interpretation of clauses (i) and (ii). However, two new questions which relate to clauses (iv) and (v) are: (1) Does within terms crossover denial apply to those providing services to or on behalf of an educational institution (the optional clause (v))? (2) Does either the between or within terms denial apply when the crossover is not from one capacity to another but from one type of employer (e.g., an educational institution) to another type of employer (e.g., a city agency as a provider of services to or on behalf of an educational institution)?

4. Interpretation.

a. Clause (v) within terms crossover situations. If clause (v) of Section 3304(a)(6)(A), FUTA, is implemented, employees providing services to which Section 3309(a)(1) applies (i.e., services to governmental entities and nonprofit organizations) who are providing services to or on behalf of an educational institution must be denied benefits during within terms periods when crossing over from one capacity to the other. This interpretation is based upon: (1) The language of clause (iii) which provides for denial with respect to any services described in either of the first two clauses; (2) the language of clause (v) which provides denial under the same circumstances as described in clauses (i) through (iv); and (3) the interpretation of clause (v) given in UIPL No. 41-83 which states on page 4 that "...if adopted, the provision must be accepted in toto and must be applied equally to all classes of services...."

b. Employer crossover situations. Denial of benefits to educational employees, either between terms or within terms, is not permitted under Section 3304(a)(6)(A), FUTA, when the claimant is crossing over from one type of employer to another. Clauses (i), (ii), and (iii) clearly require reasonable assurance of continued employment with the same type of employer (i.e., an educational institution) as a condition for denial during a period between or within terms. Clause (iv) requires denial "...as specified in clauses (i), (ii), and (iii)....," while clause (v) permits denial "...under the same circumstances as described in clauses (i) through (iv)...." "As specified" and "same circumstances" are interpreted as precluding denial unless there is reasonable assurance of continued employment with the same type of employer, an interpretation that is consistent with existing and previous interpretations of clauses (i), (ii), and (iii), Section 3304 (a)(6)(A), FUTA.

5. Action Required. SESAs should reexamine their State's unemployment insurance law to determine whether its between and within terms denial provisions, implementing the exception clauses under Section 3304(a)(6)(A), FUTA, are consistent with the above interpretations and seek corrective legislation wherever necessary.

6. Inquiries. Questions should be directed to the appropriate regional office.